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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re LILY C. et al., Persons Coming Under the Juvenile Court Law.	B235083
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. WENDY R. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. CK84264)

APPEAL from the order of the Superior Court of Los Angeles County, Marilyn Mordetsky, Juvenile Court Referee. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant Mother.

Donna Balderston Kaiser, under appointment by the Court of Appeal, for Defendant and Appellant Father.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Judith A. Luby, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

In this appeal, Wendy R. and Michael C., mother and father of Lily (six years old) and Michael (five years old) challenge the court's order after the six-month review hearing (Welf. & Inst. Code, § 366.21, subd. (e))[1] that the parents complete a drug rehabilitation program, and the court's finding that the Department of Children and Family Services (the Department) provided the parents reasonable reunification services. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The setting for this dependency*

The juvenile court sustained a petition finding true that (1) mother and father placed the children in a detrimental and endangering situation by failing to provide appropriate supervision which resulted in Michael wandering the streets alone; (2) *mother has a history of substance abuse* which periodically renders her incapable of providing regular care for the children; (3) father is a recent *user of marijuana* which renders him periodically incapable of providing regular care for the children; and (4) the parents have a history of engaging in domestic violence including a May 2010 episode in which father broke down the door of the children's home. All of this conduct placed Lily and Michael at risk of harm. (§ 300, subd. (b).) The court declared father to be the children's presumed father and removed the children from their parents' custody.

As background to this dependency, the Department's detention report indicates that on October 18, 2010, the sheriff's department picked up then three-year-old Michael, who is nonverbal, and who was wandering on the street alone. Father claimed he felt sick that morning and went to the bathroom where he stayed for *an hour* with the door closed. When he came out, Michael was gone. At the time, mother was asleep upstairs.

Both parents admitted they used marijuana, but outside the home. Mother stated she stays out all night when she uses marijuana. She also uses it and alcohol to manage

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[1] All further statutory references are to the Welfare and Institutions Code.

the pain from when she broke her back and breast bone years ago. She also drinks two glasses of vodka per night. Asked whether father did drugs, mother replied, " 'Not that I know of, *now*.' " (Italics added.) Father explained that drugs were " 'not around the house' " because he and mother were broke and had no money to buy drugs. He also admitted to having used marijuana *a month before the children were detained*, i.e., in September 2010. Mother's older child, 10-year-old Logan, told the Department that mother drank alcohol sometimes. Logan had been placed with his father, who, along with his father's girlfriend, believed mother was currently using drugs because she had appeared at Logan's basketball practices high, had lost 80 pounds, had grey skin, and shaky hands. Logan's father explained that father used to sell mother marijuana.

This family has had other recent encounters with the Department. First, mother's eldest child (now 15 years old) was removed from mother's custody because of her drug use. Then, in 2009 the Department was called after mother's boyfriend screamed at mother. In another 2009 incident the boyfriend punched a hole in the wall. The caller stated that mother has a history of using methamphetamines. The Department substantiated these allegations. The family underwent voluntary maintenance services, which services terminated six months before the most recent incident. It was about then that father kicked down the front door.

Mother requested at the October 21, 2010 detention hearing that she be ordered to do an on-demand drug test that day, and submit to weekly on-demand testing. The court acquiesced and also ordered the Department to provide mother and father with transportation funds.

Mother explained she did not want to go back to the Tarzana Treatment Center in Lancaster where she had drug tested before because she had been beaten up by an employee. The Department sent mother a letter in November 2010 listing drug testing in Santa Clarita instead. The Department provided the parents with bus passes for the month of November 2010.

The social worker reported in December 2010 that mother was enrolled in parenting classes and both parents had received and signed referrals for services.

2. *The disposition order and warning to parents to produce negative tests or enter a rehabilitation program*

After sustaining the petition, the juvenile court ordered both parents into a program of random and on-demand drug testing. The court specifically warned both parents, "*if* [*you have*] *an unexcused, missed test . . . or you test positive for drugs, you must complete a drug-rehab program.*" (Italics added.) The court also ordered mother and father to participate in individual counseling to address case issues, domestic violence counseling, and parent education. The parents signed the case plan. No one requested transportation money and the court did not order transportation funding as part of the disposition plan.

3. *The Department's efforts December 2010 to May 2011*

The Department's assessed Logan's father's home in December 2010 as a possible placement for Lily and Michael, but learned the father's girlfriend had a DUI conviction and so it declined to place the children there. The Department arranged for visitation monitors and reported on the parents' visits with the children.

By January 2011, the Department had placed the children in a foster home and was waiting for approval of a waiver to place them with Logan's father. The court ordered the Department to (1) asses the W. family as monitors for father's visits; (2) provide father with referrals for domestic violence and individual counseling programs; (3) continue working on referring Michael to the regional center; (4) continue processing the waiver; and (5) provide the court with progress on these referrals. The issue of transportation funds was not raised at that hearing.

In March, the Department gave the juvenile court a progress report on its referrals and activities. It had complied with all five of the court's directives by (1) assessing the W. family; (2) not merely providing father with referrals as ordered, but faxing the court's minute order to the Lancaster Mental Health offices and leaving messages with the counselor to verify what referral was needed for father to commence domestic and individual counseling; (3) continuing to work on the waiver; and (4) contacting the

Regional Center on Michael's behalf. The Department also obtained court permission to have Lily and Michael be sedated for dental treatment as they had multiple cavities.

4. *The Department's efforts March 2011 to June 2011*

In advance of the six-month review hearing (§ 366.21, subd. (e)), the Department reported it had also monitored the parents' compliance with their case plans; arranged for monthly visits; listed the parents' visits with the children, and the outcome of those visits; communicated with the parents and the caregivers; and twice made Regional Center referrals for Michael, who was wait listed. In March 2011, a physician diagnosed Michael with "severe developmental delay." In April and May, the social worker monitored parental visits. The Department finally obtained approval to place Lily and Michael at the home of Logan's father.

The Department provided mother with a second set of referrals for individual counseling in May 2011. Mother completed parenting education but never enrolled in individual counseling. Mother claimed she had not enrolled in counseling because she had not received referrals; but the social worker reminded mother that she had signed the referral letter in November 2010 and again in May 2011. The social worker noted that mother did not answer the social worker's "several" calls. The social worker provided father with referrals in November 2010 and in April 2011, and had communicated with the Lancaster Mental Health offices on father's behalf. Yet, father had only completed a parenting class.

With respect to the parents' testing requirement, the Department reported that mother had tested negative for drug use on November 16, 2011 but did not appear for a test on November 19, 2011, and thereafter missed a total of eight tests. Father appeared for a test in November but was excused because he did not have identification. Then, he missed nine tests. Father claimed he had been excused from testing. But, the social worker explained, what father had done was to attempt to test when he was not called.

On May 26, 2011, mother explained to the social worker the reason she did not appear for drug tests was that she did not "have a way [to get] there." The social worker asked why that would be if mother could drive to her visits with the children. The social

worker also reminded mother of "several calls" made to mother's cell phone which went unanswered.

On June 2, 2011, at the parents' request, the court ordered the Department to provide bus passes *and* transportation funds for the parents on a monthly basis, and that mother drug test on a weekly basis, until the next hearing.

On June 7, 2011, the social worker left a message on mother's cell phone asking mother to pick up her transportation money, but mother did not call back. On June 9, 2011, the social worker wrote to mother that mother was ordered to submit to on-demand weekly testing and that the social worker had left mother a message to come and pick up her transportation check, but that mother had not responded. Mother's failure to respond to the social worker's contact led the social worker to write, "at times the effort [by mother] to keep in touch is not there."

Although, the parents regularly visited the children, mother failed to test on June 8 and on June 22, 2011. On June 27, 2011, the social worker met with the parents and asked mother to make herself available to drug test. On June 29, 2011, the social worker reported the Department had given mother a check for $140 and father a check for $116 *for transportation*, but since they both drove cars, the social worker opined *the bus pass money was wasted*.

5. *The six-month review hearing (§ 366.21, subd. (e))*

The juvenile court scheduled the six-month review hearing for a contest because the parents argued the Department did not provide transportation funds which, along with whether the parents called the Department seeking funds, were factual questions. The hearing was held in July 2011. The juvenile court admitted into evidence the Department's reports and father's exhibit No. 4. Father's exhibit consisted of four pages from the Santa Clarita drug test site, for February 25, March 10, March 28, and April 4, 2011, and indicated that on those four days, father appeared at the Santa Clarita test center for a drug test but his name was not on the list for on-demand testing because father was scheduled to test in Lancaster. There is no explanation for father's failure to appear at the Lancaster site or his failure to test between November 2010 and February

2011, and again in April through July 2011, other than father's claim that he did not have transportation funds.

Father testified he had not received a bus pass from the Department since the case began, although he did acknowledge he received transportation funds in June as reimbursement for transportation to the testing site and visitation. Father was aware he was required to drug test and that if he missed a test, it would be considered a dirty test, and he would have to complete a substance abuse treatment program. He testified he called the 800-number daily since the last court date in June 2011 to see whether he would have to test. Father testified that he had attempted to test at the Santa Clarita location only to be told that his name was not on the list there but on the Lancaster list, and that the testing facility would clear the confusion up with father's social worker. Father called the social worker and "[t]wo out of the, I believe, *four times* that that happened, she [the social worker] let me know don't worry about it. You're not the one we are worried about anyway. I'll get that taken care of . . . ." The problem was corrected and for the last seven or eight, or four times, father testified, he has tested in Santa Clarita. Father did not introduce into evidence any testing receipts from this period. Father is unaware of any positive results. Father also testified that between December 2010 and February 2011, *he was called in to test, but did not appear because he had no transportation funds*. He claimed he called the social worker who excused him from testing because the Department was unable to supply the funds. The last time he used illegal substances, father testified, was well over a year and a half before July 2011. He visited the children during this period by borrowing gas money from family members.

Mother testified that she tested once in November 2010 and then had no transportation funds until two weeks before the July 2011 six-month review hearing. She testified that each time she was unable to test from November 2010 through March 24, 2011, she told the social worker. She claimed she left messages with the social worker or the supervisor at least once a month. It has been over a year and a half since she used an illegal substance, mother testified.

At the close of the hearing, the juvenile court found "unconscionable" that these parents did not test for months and justified it by claiming they did not have transportation funds. The court believed the Department's records showing parents did not call the Department seeking funding, and thus disbelieved the parents' testimony that their failure to test was because of a lack of money and that they called the Department to request funds. The parents' conduct, the court found, indicated that testing was simply not a priority. Thus, the court ruled that continued jurisdiction was necessary. It found return of the children to the parents' physical custody would create a substantial risk of detriment to the children's safety and the extent of the parents' progress toward alleviating or mitigating the causes of placement was "unsatisfactory." Rejecting the parents' argument to the contrary, the court found by clear and convincing evidence that the Department had complied with the case plan. The court ordered reunification services to continue and ordered both parents to complete a substance abuse program with weekly, random, and on-demand drug testing. The parents separately appealed.

CONTENTIONS

The parents contend that the juvenile court's finding that the Department provided reasonable services is unsupported by the evidence, and its order that they complete drug rehabilitation program is an abuse of discretion.

DISCUSSION

1. *The parents have standing to appeal (§ 395).*

Generally, parents do not have standing to raise the contention in isolation that the Department failed to provide them with reasonable reunification services. Such a ruling is not adverse to the parents with the result they are not aggrieved by it. (*Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1150, 1152.) Here, however, the parents did not raise this adequate-services finding in isolation. They also contend the juvenile court erred in ordering them into a drug rehabilitation program. The court's ruling at the six-month review hearing (§ 366.21, subd. (e)) was not favorable to the parents as it expanded the case plan, and so the parents are aggrieved and may appeal. (§ 395; *In re T.G.* (2010) 188 Cal.App.4th 687, 693.)

2. *The juvenile court was entitled to disbelieve the parents' justification for their numerous missed drug tests.*

The parents contend the juvenile court erred in ordering them to enter drug rehabilitation based on the record of missed drug tests. They argue they were excused from testing because the Department did not provide them with transportation funding except in November 2010 and June 2011. They argue the Department's records were inadequate because they did not reflect the fact the parents called the social worker regularly seeking funds.

"In reviewing the sufficiency of the evidence on appeal, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass judgment on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court's order, and affirm the order *even if there is other evidence that would support a contrary finding*. [Citation.] When the trial court makes findings by the elevated standard of clear and convincing evidence, the substantial evidence test remains the standard of review on appeal. [Citation.] The appellant has the burden of showing that there is *no evidence* of a sufficiently substantial nature to support the order. [Citations.]" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 915-916, italics added.)

Here, the juvenile court had the Department's reports and heard the parents' testimony. It then found the parents' failure to test was not because of the Department's actions or failure to act, but because of the parents' lack of interest in complying with the testing portion of the court's disposition order. The record supports the court's conclusion. The evidence shows that both parents drove themselves to visits with the children and to parenting classes, all the while claiming they did not have money to drive to the lab. Mother missed tests in November 2010 and in June 2011 even though she had a bus pass for November and was repeatedly notified in June of the availability of a bus

pass for that month, further belying her claim that funding, or the Departments failure to supply funds, was the justification.

Father's rationale is equally unavailing. He argues that his exhibit No. 4 demonstrates that he did "in good faith try to test." However, even were the court to credit father's exhibit 4 as demonstrating what father contends it shows, the exhibit only demonstrated father's "good faith" attempt to test *four* times in nine months. Father provided no explanation for his failure to test during the rest of the review period, other than lack of funds and that he showed up to the wrong site, which rationalizations the court also did not believe. Both parents claimed they called the social worker frequently to explain their failure to test and to ask for money. Yet, the Department's records, including the so-called title XX's, indicate it was the *parents* who did not respond to the *social worker's contacts*, not the other way around. The juvenile court was entitled to believe the Department's reports. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52.)

The court also heard the parents testify that neither one had used drugs in one and a half years, whereas they had also admitted to the social worker to using just *nine months earlier*. And, the court was aware that mother claimed she had not received referrals for her case plan, even though she had signed referrals in November 2010 and May 2011. In short, the juvenile court was entitled to conclude the parents were not credible and to disbelieve their proffered justifications for failing to drug test. We may not reweigh that determination. (*In re Cole C.*, *supra*, 174 Cal.App.4th at p. 916.) Once the court discounted the parents' rationales, the parents' failure to test reveals their "lack of interest or capacity rather than the inadequacy of the services offered." (*In re Laura F.* (1983) 33 Cal.3d 826, 839.)

Where both parents are admitted drug abusers; where the juvenile court specifically warned the parents that *one* missed or positive test would trigger an obligation to enter drug rehabilitation; where the parents missed more tests than they took; and where the court disbelieved the parents' justifications and concluded instead that the parents' behavior showed that testing was not a priority for them, the court acted

absolutely within its discretion in ordering these parents into a substance abuse rehabilitation program.

3. *The record supports the juvenile court's finding that the Department provided reasonable services in this case*.

Both parents contend the evidence does not support the juvenile court's finding the Department provided reasonable services. They argue the reason they missed numerous drug tests was that the Department failed to provide them with transportation funds. Father also argues the Department did not take steps to correct the mix up about father's testing site. These failures, the parents argue, is evidence that the Department did not provide reasonable services.

In reviewing the juvenile court's finding of reasonable services, our sole task is to determine whether substantial evidence establishes that the Department made a good faith effort to provide reasonable services. (*In re Monica C*. (1995) 31 Cal.App.4th 296, 306.) We view the evidence in the light most favorable to the ruling, resolving conflicts and indulging all reasonable inferences in favor of the finding. (See *In re Julie M*. (1999) 69 Cal.App.4th 41, 46.) We do not reweigh the evidence. (*In re Cole C*., *supra*, 174 Cal.App.4th at pp. 914-915.)

Services may be deemed reasonable when the case plan has identified the problems leading to the loss of custody, the Department has offered services designed to remedy those problems, has maintained reasonable contact with the parents, and has made reasonable efforts to assist the parents in areas in which compliance has proven to be difficult. (*In re Riva M*. (1991) 235 Cal.App.3d 403, 414.) In reviewing the reasonableness of services provided by the Department, we "recognize that in most cases more services might have been provided, and the services which are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

On appeal, the parents do not challenge the Department's provision of services in general. As the sole asserted basis for the inadequacy of services, the parents point to the

social worker's failure to provide bus passes or other transportation funding except in November 2010 and June 2011, despite the parents' repeated requests for funds. The record here supports the conclusion that, as to this portion of the case plan, the Department made a good faith effort to provide reasonable services.

Although the parents' briefs are replete with argument that the Department *should have* provided funding on a regular basis, those arguments are assumptions and are not supported by the record. Instead, the record shows that transportation funding was never made part of the case plan, a fact mother acknowledges on appeal. The parents asked for transportation funds at the October 21, 2010 detention hearing, and at the June 2, 2011 hearing. Both times, the juvenile court ordered the Department to provide the parents with funds and the Department complied. As explained, the juvenile court disbelieved the parents' testimony they regularly called the Department and requested funding. The court knew the parents drove themselves to visits and rarely missed visits, and the court found the parents failure to test was not because of the Department's failure to provide funds. Thus, the Department did not fail to provide adequate services on this basis, and there was no evidence it was made aware of a particular need for funding.

Father also argues the Department failed to "insure" he was able to drug test. Father argues that the Department failed to clear up the confusion over which test site was his appointed lab. However, he admitted the social worker resolved the problem.

"The requirement that reunification services be made available to help a parent overcome those problems which led to the dependency of his or her minor children is not a requirement that a social worker take the parent by the hand and escort him or her to and through classes or counseling sessions. A parent whose children have been adjudged dependents of the juvenile court *is on notice of the conduct requiring such state intervention*. If such a parent in no way seeks to correct his or her own behavior or waits until the impetus of an impending court hearing to attempt to do so, the legislative purpose of providing safe and stable environments for children is not served by forcing the juvenile court to go 'on hold' while the parent makes another stab at compliance." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5, italics added.) In sum, the parents have not demonstrated that there is no evidence of a sufficiently substantial nature to support the juvenile court's finding that the Department provided reasonable services. (*In re Cole C., supra*, 174 Cal.App.4th at p. 916.)

DISPOSITION

The order is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.